IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHEILA COOPER, Individually and as Administratrix of the Estate of JEAVON KNOTT, TAMIKA BUTLER, as next friend and parent of TYREK LAQUAY KNOTT, a minor and TYREK LAWUAY KNOTT, individually,	)	C.A. No. 08C-01-328 MMJ
Plaintiffs,	)	
v.	)	
IHOP RESTAURANTS, INC., a Delaware Corporation, IHOP CORP., a Delaware Corporation, IHOP FRANCHISING, LLC, a Delaware Limited Liability Corporation, 4780 LLC, a/k/a and/or d/b/a 4780 LLC, TROUT, SEGALL & DOYLE DELAWARE PROPERTIES LLC, a Foreign Limited Liability Company, TROUT, SEGALL & DOYLE, LLC, a Foreign Limited Liability Company, TROUT, SEGALL & DOYLE MANAGEMENT CO., INC., a Foreign Corporation, TROUT, SEGALL & DOYLE MID-ATLANTIC, INC. a Foreign Corporation, MARTIN LUTHER FOUNDATION OF DOVER, a Delaware Corporation, SHELTON CALDWELL, AARON CANNON, and LESHAUN INGRAM,	)	
Defendants.	)	

Submitted: October 20, 2011
Decided: November 9, 2011

On Defendants Trout Segall & Doyle Delaware Properties, LLC;
Trout Segall & Doyle, LLC; Trout Segall & Doyle Management Co., Inc.;
And Trout Segall & Doyle Mid-Atlantic, Inc.
Motion for Summary Judgment

MEMORANDUM OPINION

Arthur M. Krawitz, Esquire, Matathew R. Fogg, Esquire, Doroshow, Pasquale, Krawitz & Bhaya, Wilmington, Delaware; Mark J. LeWinter, Esquire, (Argued), Jeffrey S. Downs, Esquire, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., Philadelphia, Pennsylvania (of counsel), Attorneys for Plaintiffs

Thomas J. Gerard, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware, Attorneys for Defendants Trout Segall & Doyle Delaware Properties, LLC, Trout Segall & Doyle LLC, Trout Segall & Doyle Management Co., Inc. and Trout Segall & Doyle Mid-Atlantic, Inc.

JOHNSTON, J.

This litigation arises from the murder of Jeavon Knott, which occurred in the early morning hours of April 21, 2006. Knott was fatally shot while on property owned, maintained, and managed by Defendants Trout Segall & Doyle Delaware Properties, LLC, Trout Segall & Doyle, LLC, Trout Segall & Doyle Management Co., Inc., and Trout Segall & Doyle Mid-Atlantic, Inc. (collectively referred to as "Trout Segall"). It is undisputed that Knott was a trespasser at the time of his death.

Plaintiffs (decedent's estate and next of kin) allege that Trout Segall acted willfully and wantonly in failing to provide adequate security despite Trout Segall's awareness of ongoing criminal activity on the premises. Plaintiffs also assert that the criminal acts of certain co-defendants – that is, those individuals charged with the murder of Knott[1] – did not break the chain of causation between Trout Segall's conduct and Knott's death because co-defendants' acts were reasonably foreseeable.

Trout Segall has moved for summary judgment, arguing that Plaintiffs have failed to establish that Trout Segall engaged in willful or wanton conduct. Trout Segall further argues that the criminal acts of the co-defendants constitute a superseding and intervening cause of Knott's death.

[1] Shelton Caldwell, Aaron Cannon, and Leshaun Ingram were charged with Knott's murder.

The Court finds that genuine issues of material fact exist as to whether Trout Segall knew or should have known of ongoing criminal activities that occurred in the parking lot; and if so, whether Trout Segall's conduct was recklessly indifferent or willful; whether Jeavon Knott's murder was reasonable foreseeable and preventable by Trout Segall; and whether the death was a result of a superseding or intervening cause. Therefore, Trout Segall's Motion for Summary Judgment must be denied.

FACTUAL BACKGROUND[2]

On April 21, 2006, at approximately 1:00 a.m., Jeavon Knott entered the Dover Crossing Shopping Center parking lot. At the time Knott entered the premises, all of the businesses within the shopping center were closed. Knott entered the parking lot for the purpose of "hanging out" with friends. While in the parking lot, Knott suffered several fatal gunshot wounds inflicted by another individual hanging out in the lot.

At the time of the incident, the Dover Crossing Shopping Center and its parking lot were owned, maintained, and managed by Trout Segall. At the time of the incident, Trout Segall provided no security or warning signs

[2] The procedural context is more fully presented in the Court's November 17, 2009 Memorandum Opinion. *Cooper v. IHOP Restaurants, Inc.*., 2009 WL 4021199 (Del. Super.).

in the parking lot. However, one of Trout Segall's tenants, International House of Pancakes, maintained video surveillance of the parking lot.

In a newspaper article published after the incident, the Dover police characterized Trout Segall's parking lot as a popular "hang out" after the local nightclubs and bars closed. According to several police reports, the following crimes were reported on the parking lot within 15 months prior to the shooting:

(1) on January 22, 2005 at 1:48 a.m., a car was vandalized;

(2) on February 27, 2005 at 2:00 a.m., a fight broke out on the premises;

(3) on September 18, 2005 at 2:00 a.m., a gang assaulted and injured three individuals;

(4) on September 25, 2005 at 2:19 a.m., a large crowd loitered on the lot;

(5) on November 13, 2005 at 2:07 a.m., a fight broke out on the premises;

(6) on December 11, 2005 at 2:04 a.m., a large crowd loitered on the lot;

(7) on December 18, 2005 at 3:01 a.m., a fight broke out on the premises; and

(8) on February 20, 2006 at 6:52 p.m., a shooting occurred, seriously injuring one individual.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[3] All facts are viewed in a light most favorable to the non-moving party.[4] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[5] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[6] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[7]

[3] Super. Ct. Civ. R. 56(c).
[4] *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).
[5] Super. Ct. Civ. R. 56(c).
[6] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).
[7] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

DISCUSSION

Landowner's Duty to Trespassers

Parties' Contentions

Trout Segall argues that Plaintiffs have failed to show that Trout Segall's conduct was willful or wanton. According to Trout Segall, no evidence was presented showing that Trout Segall was aware of ongoing criminal activity on the premises after hours or that Trout Segall encouraged a dangerous condition on the premises.

In response, Plaintiffs argue that Trout Segall "knew or should have known that there was a well-documented history of significant crime and violence occurring in the parking lot" after hours. Plaintiffs further contend that despite such awareness, Trout Segall consciously disregarded the attendant risk of harm to others. Therefore, Plaintiffs contend that summary judgment is inappropriate.

Analysis

It is undisputed that Knott was trespassing on Trout Segall's property at the time of his death. Under these circumstances, Trout Segall owed Knott only a duty to refrain from willful or wanton conduct.[8] The Delaware Supreme Court has noted that such conduct parallels the terms "evil motive"

[8] *Hoesch v. Nat'l R.R. Passenger Corp.*, 677 A.2d 29, 32 (Del. 1996) (citing *Villani v. Wilmington Hous. Auth.*, 106 A.2d 211, 213 (Del. Super. 1954)).

or "reckless indifference" as set forth in Delaware's punitive damages standard.[9] "[E]ach requires that the defendant foresee that his unacceptable conduct threatens particular harm to the plaintiff…."[10]

In order to establish that Trout Segall's conduct was willful and wanton, Plaintiffs bear a heavy burden. Plaintiffs must demonstrate that Trout Segall: (1) was aware of its conduct (as opposed to acting in a merely negligent manner); (2) realized the probability of injury to another; and (3) consciously disregarded the foreseeable risk.[11] Thus, in determining whether summary judgment is appropriate in this case, the Court's inquiry must focus on two issues: whether Trout Segall was aware of foreseeable risk of the type of harm that occurred on the property, and if so, whether Trout Segall consciously disregarded such risk.

Trout Segall's Awareness

Trout Segall's state of mind is a critical consideration in determining whether the conduct was willful and wanton.[12] In order to prove that Trout Segall's conduct was willful or wanton, Plaintiffs must establish that Trout Segall was aware, either actually or constructively, of the risk of harm.[13] In other words, Plaintiffs must demonstrate that Trout Segall "knew or should

[9] *Jardel, Co. v. Hughes*, 523 A.2d 518, 529 (Del. 1987).
[10] *Id.* at 529-30.
[11] *Bailey v. Pennington*, 406 A.2d 44, 46 (Del. 1979).
[12] *Jardel*, 523 A.2d at 530.
[13] *Id.* (citing *McHugh v. Brown*, 125 A.2d 583, 585 (Del. 1956)).

have known of the existence of a condition on its parking lot involving an unreasonable risk of harm…."[14]

In this case, there is a factual dispute regarding whether Trout Segall was aware of ongoing criminal activity on the premises. Trout Segall claims that neither its principals nor employees were actually or constructively aware of criminal activity on the premises. As evidence of this lack of knowledge, Trout Segall offered the deposition testimony of Carol Ferguson, Trout Segall's property manager during the relevant time period. Ferguson testified that she did not recall people congregating on the property after hours, nor did she recall any criminal activity occurring on the property during the relevant time period. Ferguson further testified that she was never contacted by Dover Police regarding any criminal activity on the property.

To corroborate Ferguson's testimony, Trout Segall also offered the deposition testimony of Captain Timothy Stump of the Dover Police. Stump testified that he, personally, never contacted Trout Segall to inform Trout Segall of large crowds gathering in the parking lot after hours. According to Stump, he would have attempted to contact Trout Segall had he believed that Trout Segall was somehow encouraging the crowd.

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[14] *Davis v. Del. State Educ. Ass'n*, 1989 WL 167407, at *3 (Del. Super.). *See also Higgins v. Walls*, 901 A.2d 122, 139 (Del. Super. 2005); *Jardel*, 523 A.2d at 530.

In response, Plaintiffs contend that Trout Segall knew or should have known that their parking lot was a well-known after hours gathering spot where criminal activity occurred. In support of this contention, Plaintiffs presented newspaper articles from the News Journal and the Dover Post that described the parking lot as a popular hangout after the local bars and nightclubs had closed. Additionally, Plaintiffs presented video surveillance from the nearby IHOP that depicted a large gathering of vehicles in the parking lot after businesses had closed.

Plaintiffs also offered the report of liability expert Jack F. Dowling, who performed a crime risk analysis for the property. Dowling, referring to the deposition testimony of various members of the Dover Police Department, noted that crowds of nearly 400 people would gather in the parking lot after hours. These gatherings led to 100 reported incidents of criminal conduct from April 21, 2003 through April 21, 2006. Specifically, Dover Police responded to 55 fights, 27 assaults, 11 robberies, and 6 rapes. Perhaps most notable, officers were dispatched in response to a shooting on February 20, 2006, approximately two months before Knott was murdered.

Further, Plaintiffs presented the affidavit of Barry Larkin, whose company provided street sweeping services for the parking lot. According to Larkin, on November 6, 2005 at approximately 1:55 a.m., individuals who

had gathered in the parking lot began throwing beer bottles at the sweeping machine. Larkin stated that he advised Trout Segall of this specific incident and expressed his concern regarding "unruly" after hours gatherings in the lot.[15]

Viewing the facts in the light most favorable to Plaintiffs, the nonmoving party, the Court finds that a genuine issue of material fact exists as to whether Trout Segall was actually or constructively aware of the criminal activities occurring on the premises after hours. The only evidence presented that Trout Segall had actual knowledge of ongoing criminal activity is the Larkin affidavit. Nevertheless, the Court finds that a genuine issue of material fact exists as to whether Trout Segall should have known about criminal activity on the premises, and whether such criminal activity involved an unreasonable risk of harm.

Conscious Indifference

If Trout Segall was, in fact, actually or constructively aware of criminal activity on the premises, an additional factual issue exists as to whether Trout Segall consciously disregarded the risk of injury to others created by such activity. In order to establish that Trout Segall was

[15] The Court notes that there are inconsistencies between Larkin's September 14, 2011 affidavit and his October 25, 2011 deposition testimony. The statements in Larkin's affidavit are far more certain and specific than Larkin's later testimony.

consciously indifferent, Plaintiffs must show that Trout Segall turned its back on a known risk.[16]

Trout Segall argues that even if it was aware of ongoing criminal activity on the premises, no evidence has been presented to suggest that Trout Segall was consciously indifferent. Trout Segall contends that Plaintiffs have failed to show that security measures such as signage, cameras, or patrol would have prevented Knott's death. According to Trout Segall, officers from the Dover Police Department "regularly patrolled the lot and attempted to curtail the problem." Trout Segall claims that Plaintiffs have offered no evidence to suggest that Trout Segall's efforts would have been any more successful than those of the Dover Police Department in curbing the criminal activity in the parking lot.

Plaintiffs argue that Trout Segall "turned a blind eye" to known risks of danger on the property by failing to implement any security measures whatsoever. According to Plaintiffs, Trout Segall's conduct, or lack thereof, was "below any level of care, was reckless, and below common practice at a shopping center with the identified extremely high crime risk."

In support of its position, Plaintiffs offer the expert report of Dowling, who opined that Trout Segall's "security program" was inadequate in light

[16] *Jardel*, 523 A.2d at 531.

of the extremely high risk of crime in the parking lot. According to Dowling, Trout Segall disregarded any security information received from professional organizations, and failed to post signs on the property to notify the public as to who owned or managed the property. Additionally, Dowling noted that Trout Segall made "no attempt … to conduct any crime risk analysis; contact the Dover Police Department to learn of criminal activity on or near the property; visit the tenants/property on a regular basis; … or discuss security." Dowling concluded that "[h]ad [Trout Segall] performed these common and normal crime risk assessments, there is a high probability that the extremely high crime dangers at this location would have been recognized and reasonable measures employed to reasonably prevent this obviously foreseeable tragedy."

Plaintiffs claim that Dowling's conclusion is consistent with the deposition testimony of Mr. Jerome B. Trout, III ("Trout"), president of Trout Segall. Trout testified that he would have taken action had he known about the gatherings in the parking lot: "I think we would have contacted the police, made them aware. And if it was really a problem and the police said – had acknowledged that there was a problem, we would have hired security guards to take care of that."

Viewing the evidence in the light most favorable to Plaintiffs, the Court finds that a genuine issue of material facts exists as to whether Trout Segall was consciously indifferent to the risk of harm to others.

Superseding and Intervening Cause

Parties' Contentions

Trout Segall argues that even if Trout Segall breached any duty, the criminal acts of the co-defendants constitute a superseding and intervening cause. According to Trout Segall, the criminal acts of the co-defendants were extraordinarily negligent, and thus break the casual chain stemming from Trout Segall's alleged breach.

In response, Plaintiffs claim that because the criminal acts of the co-defendants were reasonably foreseeable to Trout Segall, the causal chain is unbroken. Plaintiffs argue that "[i]t is not highly extraordinary that a criminal act will occur when repeated criminal acts and mob-mentality behavior is known whether in actuality or constructively…."

Analysis

A landowner's duty is not automatically superseded by the intervening criminal act of a third party.[17] An intervening criminal act will only break the causal chain stemming from the landowner if the act was

[17] *Duphily v. Del. Elec. Co-op, Inc*., 662 A.2d 821, 829 (Del. 1995); *Tingle v. Ellis*, 1999 WL 743651, at *5 (Del. Super.).

"neither anticipated nor reasonably foreseeable by the [landowner]."[18] Foreseeability, in this context, turns on whether Trout Segall knew or should have known that its actions or inactions created an opportunity for the commission of a crime of the nature occurring in this case.[19]

Thus, the relevant inquiry here rests, in part, on Trout Segall's knowledge of prior criminal activities occurring on the property – a factual issue which, as the Court has already noted, is disputed. Additionally, a genuine issue of material fact exists as to whether the co-defendants' criminal act was foreseeable.

CONCLUSION

Plaintiffs have a very heavy burden to prove that the property owner and property management defendants were aware of an unreasonable risk of violent criminal activity; acted in a willful or wanton manner; and consciously disregarded a foreseeable risk of a trespasser's murder. Nevertheless, at this stage in the proceedings, the Court cannot and will not opine on Plaintiffs' probability of success on the merits. The question is

[18] *Duphily*, 662 A.2d at 829 (citing *Stucker v. American Stores Corp*., 171 A. 230, 233 (Del. 1934)). *See also Jayne v. Cole*, 2003 WL 21001029, at *3 (Del. Super.) ("[A] third party's act is an intervening, superseding cause if it was either unforeseeable, or was foreseeable but conducted in an extraordinarily negligent manner.").

[19] Restatement (Second) Torts § 448. *See also Duphily,* 662 A.2d at 830 ("An event is foreseeable if a defendant should have recognized the risk of injury under the circumstances.").

whether Plaintiffs have established a *prima facie* case through record evidence creating genuine issues of material fact.

The Court finds that genuine issues of material fact exist as to whether Trout Segall was aware, either actually or constructively, of the ongoing criminal activity in the parking lot; and if so, whether Trout Segall's conduct was recklessly and consciously indifferent or wanton; whether Jeavon Knott's murder was reasonably foreseeable and could have been prevented by Trout Segal's affirmative conduct; and whether the criminal acts of the co-defendants are a superseding or intervening cause.

THEREFORE, Trout Segall's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston